IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8976 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRADEEP PANDE

Versus

JAYANTIBHAI R PATEL, DIRECTORNAVSARICOTTON & SILK MILLS LTD

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Appearance :
MR ZUBIN F BHARDA for Petitioner.
DS AFF.NOT FILED (R) for Respondent.
MR AK CLERK for Respondent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/04/2007

ORAL JUDGMENT

1) The petitioner herein is the original sole defendant of Special Civil Suit No.21/2004 filed by the present respondent. In the present petition, the petitioner has challenged an order dated 31st March, 2005 passed

below Exh.9. Shortly stated the facts are as follows.

2) The opponent herein filed above mentioned suit against the petitioner before learned Civil Judge (S.D.), Navsari. Since the petitioner could not remain present on a date fixed for hearing, i.e., 26th July 2004 and had also not filed his written statement by then, the learned trial Judge closed the stage of filing of written statement by the petitioner and directed that the suit shall proceed further without the written statement.

2.1) The petitioner, therefore, filed an application Exh.9 seeking to reopen the stage of filing of written statement. This application was filed on 31st August, 2004. The petitioner contended, inter alia, that on 26th July, 2004 he could not remain present before the Court due to unavoidable circumstances. He had to rush to his native place in Uttar Pradesh on account of grave illness of his mother. He prayed that said order dated 26th July 2004, therefore, may kindly be recalled.

2.2) It was this application Exh.9, which the learned Judge rejected by the impugned order. In the impugned order, learned Judge was pleased to observe that the Court has no power to extend time for filing written statement beyond 90 days as per the amended provisions of Civil Procedure Code. It was observed that the defendant, i.e., the present petitioner had not filed his written statement within 90 days and his application, seeking setting aside of the closure of stage of filing a written statement, therefore, cannot be granted.

3) Having heard learned advocates appearing for the parties, I find that the learned trial Judge proceeded to reject the application of the petitioners solely on the ground that the Court lacked the power to

extend time for filing of written statement. The learned Judge did not opine that the reason stated by the petitioner for not being able to file the written statement within time was either not genuine or not sufficient to extend time for filing written statement.

4) The question of nature of powers enjoyed by the Civil Courts for extending time for filing written statement in response to the plaints, after amendment of the Civil Procedure Code by Amendment Act 22 of 2002 is by now well settled by decisions of the Apex Court. Reference to the case of **Kailash Vs. Nankhu & others**, reported in 2**005 (3) Scale 740** would be sufficient. In the said case, it was held that the purpose of providing time schedule for filing written statement is to expedite and not to scuttle the hearing. The provision does not impose embargo on the power of the Court to extend time. The Apex Court, however, cautioned against over or liberal use of such powers and held that the same should not be granted as a matter of routine and merely for asking, more so when the period of 90 days has expired. It was held that extension of time may be allowed by way of an exception for reasons to be assigned by the Court.

5) In view of the settled legal position, I find that the trial Court erred in rejecting the application of the petitioner solely on the ground that the Court lacked power to extend time limit for filing of written statement. Impugned order, therefore, cannot be sustained. Additionally, I have also perused the material on record and heard learned advocates appearing for the parties regarding sufficiency of reasons stated by the petitioner for setting aside the order of closing stage of filing of written statement.

6) The petitioner had stated that due to sudden and grave illness of his mother in his native place in Uttar Pradesh he had to rush there, due

to which he could not remain present before the Court on th date of hearing and could not present his reply. I find that the petitioner had made out a good case for extending time for filing written statement. Significantly, the petitioner also moved application Exh.9 within a reasonable time indicating his bona fides and sense of urgency on his part in proceeding further with the trial.

7) Considering all these aspects of the matter, while setting aside the impugned order dated 31st March, 2005, stage closed for filing of written statement is reopened. The petitioner shall have a period of two weeks from today for filing his written statement before the trial Court.

8) With these directions, the petition is disposed of. Rule is made absolute to the above extent. No costs. It will be open for the petitioner to serve this order to the trial Court directly.

(Akil Kureshi, J.)

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